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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Republic of Malta

Report to the State Party*,**

* In accordance with the decision taken by the SPT at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, this report was sent confidentially to the State party on 9 March 2015. The State party gave notification of its decision to publish the report on 24 August 2015, in accordance with article 16, paragraph 2, of the Optional Protocol.

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I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Optional Protocol" or OPCAT), members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the SPT") visited the Republic of Malta ("Malta") from 6 to 9 October 2014.

2. The SPT members who conducted the visit were: Ms. Mari Amos (Head of the delegation), Mr. Hans-Jörg Bannwart, Dr. June Paguadan Lopez and Ms Aneta Stanchevska.

3. The SPT was assisted by two human rights officers from the Office of the High Commissioner for Human Rights (OHCHR).

4. The primary objective of the visit was to provide advisory services and technical assistance to the national mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment of Malta ("the NPMs"), in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol. The visit was intended to help strengthen the capacity and mandate of the NPMs, as well as to evaluate how to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment in Malta. Another objective was to assess the strategies currently being followed to address the challenges and difficulties faced by the NPMs, taking account of the SPT "Guidelines on the national preventive mechanisms (CAT/OP/12/5) ("the NPM guidelines").

5. Meetings were held with Government officials, the Board of Visitors of the Prison and the Board of Visitors for Detained Persons (which are designated as the two Maltese NPMs), the Ombudsman, the Police Board, the Commissioner for Mental Health and Older Persons, the Commissioner for Children, Chairpersons of relevant Parliamentary Standing Committees, non-governmental organizations as well as United Nations representatives (Annex I).

6. Meetings were also held with the members of the NPMs, i.e. with both the Board of Visitors of the Prison ("the Prison Board") and the Board of Visitors for Detained Persons ("The Detention Board") which permitted the SPT to discuss with them their mandates and working methods and to explore ways of strengthening and increasing their effectiveness. In order to see how the NPMs apply their working methodologies in practice, the SPT also visited, together with the NPMs, places of deprivation of liberty which had been chosen by the NPM. (Annex II). These visits were led by the NPM, with the members of the SPT adopting the role of observers.

7. The SPT wishes to express its gratitude to the authorities of the Government for their help and assistance relating to the planning and undertaking of the visit.

8. The SPT also wishes to express its gratitude for the assistance provided by the Representative of the United Nations High Commissioner for Refugees in Malta prior to and during the visit.

II. The national preventive mechanism

9. Malta acceded to the Convention against Torture on 13 September 1990 and ratified the OPCAT on 24 September 2003. On 8 April, Malta designated the Board of Visitors of the Prison ("the Prison Board"), established in 1976, as NPM by Legal Notices 265 and 341

and established the Board of Visitors for Detained Persons ("the Detention Board") as NPM by Legal Notice 266.

10. The Prison Board and the Detention Board exercise the functions of a National Preventive Mechanism for the prevention of torture, as provided for in the Optional Protocol to the United Nations Convention against Torture.[1] The tasks and powers of the NPMs, therefore, derive from the OPCAT, in particular articles 19 and 20. However, the failure to set out in detail the tasks and powers of the NPMs in their respective regulations, in accordance of the OPCAT and the NPM Guidelines, has hindered the NPMs in undertaking the full range of functions that the OPCAT, the NPM guidelines and other relevant instruments require the NPMs to undertake.

11. The Prison Board is composed of nine members, who serve the Board on a part-time basis, and it does not have a secretariat to support its work. While the Prisons Act says that the members of the Prison Board shall be appointed annually by the President of Malta, currently the members are appointed annually by the Ministry of Home Affairs and National Security. When this report was written, eight out of nine current members were new, having been appointed for less than a year.

12. The Detention Board is comprised of six members, who serve the Board on a part-time basis, and it does not have a secretariat to support its work. The Detention Board currently has only four members, who have been on the Board since 2008 without an official notice of renewal of their appointment. Two positions became vacant in 2013 as a result of those members' resignations and these have not yet been filled.

13. The mandate of the NPMs do not cover all places of deprivation of liberty in Malta. The Prison Board is mandated to monitor mainly the Corradino Correctional Facility (CCF) and its subsidiary unit for juvenile detainees (YOURS) and the Detention Board is mandated to monitor the Safi detention centre and the Hal Far Detention Centre. The Detention Board also monitors other places where migrants and asylum-seeker detainees are sent for medical treatment or deportation, including the Mount Carmel Psychiatric Hospital and 3 police lock ups. In practice, however, Mt. Carmel Psychiatric Hospital is under the jurisdiction of, and is visited by, the Mental Health Commissioner.

14. While individual members of the Prison Board have made frequent visits to the CCF, the Board itself made 12 official visits to the CCF from July 2013 to June 2014[2]. During visits, detainees can request an interview with the members of the Board in private and they can also send their complaints to the Board via email through a focal point (a correctional officer) in CCF. The Board holds quarterly and/or monthly board meetings to follow up on complaints and reports made by detainees.

15. In 2013 the Detention Board carried out 33 visits, to the detention centres at Hal Safi and Hal Far as well as to Mount Carmel Hospital, only to the parts where a number of detainees were inpatients. In 2014, from January to May, it made 16 visits to the detention centres, Mount Carmel Hospital and the police lock-ups. During these visits, the Board met detainees who requested private interviews. The Detention Board also held monthly plenary meetings to discuss the overall situation of the detention centres and activities carried out by the Detention Services and other civil society organizations.

[1] Article 104 (f) of the Prisons (Amendment) Regulations 2007 and article 3 (e) of the Board of Visitors for Detained Persons (Amendment) Regulations 2012 state, respectively, that the Prison Board and the Detention Board shall "shall have functions to as the body of persons responsible for a National Preventive Mechanisms for the prevention of torture, as provided for in the Optional Protocol to the United Nations Convention against Torture."

[2] Report on the implementation of OPCAT in Malta, submitted by the State party in August 2014, P.7.

16. The SPT acknowledges the State party's efforts in implementing its obligations under the OPCAT and expresses its gratitude to the support provided prior to and during the visit, which allowed it to meet with different stakeholders and monitor the implementation of the mandate by the NPMs. The SPT notes that the NPMs are faced with several obstacles hindering the full and effective implementation of their tasks, which this report will address in the next chapter, together with recommendations to the State party.

17. In accordance with its mandate, as set out in article 11 (b), subparagraphs (ii) and (iii), the SPT will address a separate confidential report to the NPMs of Malta.

III. Main obstacles faced by the national preventive mechanisms

18. While the State is free to determine the institutional format of the NPMs, it is imperative that the NPM is fully compliant with the OPCAT, taking account of the NPM Guidelines, and its functional and operational independence is guaranteed, taking account of the Principles relating to the Status of National Institutions ("the Paris Principles").

19. The SPT noted that the two Boards were designated as NPMs without due consideration being given to the requirements and practical needs of the NPMs, and in particular their preventive mandate. Therefore, there is a lack of understanding both among the public authorities and the members of the NPMs themselves on the role and function of a NPM, as well as of some key concepts, such as what is a preventive approach, institutional independence, and the definition of places of deprivation of liberty provided by the OPCAT and the NPM Guidelines.

20. **The SPT considers it to be essential that the NPMs, as a first priority, educate their members concerning the role and functioning of NPMs under the OPCAT and the Guidelines on national preventive mechanisms.**

21. The SPT notes that there are in the Republic of Malta a variety of bodies monitoring places of deprivation of liberty, including, in addition to the two NPMs, public monitoring bodies such as the Ombudsman, the Police Board, the Commissioner for Mental Health and Older Persons and the Commissioner for Children. It notes with concern that not all places of deprivation of liberty, as defined in the OPCAT, fall within the mandate of the NPMs and that even taking into account of those public monitoring bodies that are not part of the NPM, there are still significant monitoring gaps. At the same time, the overlaps between bodies monitoring the same institutions could risk creating confusion and duplication of work, as, for example, at the Mount Carmel Hospital which is visited by the two NPMs and the Commissioner for Mental Health and Older Persons.

22. The SPT also notes that there are significant variations in the mandate, powers and functions, appointment processes, levels of state funding, and institutional arrangements of the public monitoring bodies, including the two NPMs.

23. **The SPT recommends that the State party develop a full list of the types of places where persons are deprived of their liberty, in accordance with the OPCAT definition, and ensure all such places in the State party fall within the mandate of the NPMs established in accordance with the OPCAT, the NPM Guidelines and the Paris Principles.**

24. **The SPT also recommends that the State party, first of all, sets out a clear and coherent vision of its approach to torture prevention in order to determine the most effective and efficient institutional structure for the prevention of torture in the Republic of Malta. This should include a study of the best practices, challenges and experiences of the various national monitoring bodies and clearly define the roles of the NPMs, public authorities, civil society and international cooperation and how they**

relate to each other; and encourage and support cooperation and synergy between them in order to enhance the overall efficiency and effectiveness of the NPMs.

25. The SPT is concerned at the weakness of the legal framework providing for the independent and effective functioning of the NPMs. First, there is no domestic legislation giving effect to the OPCAT. Secondly, the legal provisions establishing the NPMs do not explicitly provide the NPMs with NPM status or provide them with the institutional and operational independence, power and authorities, which are set out in the OPCAT and the NPM Guidelines. This significantly limits the effectiveness of the NPMs, particularly as regards the follow up to their recommendations with the authorities.

26. **The SPT considers it vital that the legal framework providing for the independent and effective functioning of the NPMs is significantly strengthened. The SPT recommends that the State party incorporate the OPCAT into domestic law; amend and enhance the existing legal framework providing for the establishment of the NPMs by enacted specific legislative provisions setting out their mandate, institutional and operational independence, appointment criteria and membership processes, functions and powers in a way which fully reflects the OPCAT, the NPM Guidelines and the Paris Principles. The SPT wishes to emphasize the importance of the NPM having the full range of functions and powers set out in those documents, including the power to submit proposals and observations on existing or draft legislation.**

27. The SPT notes with concern (a) the lack of a transparent and competitive appointment process as well as of known selection criteria for membership of the NPMs, (b) appointments being made at the sole discretion of the Minister for Home Affairs and National Security, (c) the short term of the membership (1 year) and (d) unexplained delays in appointments. The SPT reminds the State Party that its current practice is not in conformity with the NPM Guidelines and the OPCAT.

28. **The SPT recommends that the State party establish a transparent and competitive appointments procedure and consult with civil society organisations and other stakeholders prior to the selection of NPM members. It also recommends that it ensure that the NPMs have a multi-disciplinary, independent, impartial and competent membership with sufficiently long terms of membership. It also urges the State party to fill the current vacancies on the Detention Board without delay.**

29. The SPT notes with concern that all members of the NPMs work on a part-time basis, which limits their ability to undertake their NPM functions.

30. The SPT **recommends that the State party consider making membership of the NPMs a full-time and remunerated position.**

31. The SPT is particularly concerned that no resources – financial, human or logistical – have been allocated to the NPMs to enable them to carry out their mandates. It appears that the public authorities do not consider that the NPMs need such resources to carry out their current functions.

32. **The SPT reminds the State party that the NPMs are not currently able to function in accordance with the OPCAT and recommends that the State party provide the NPMs with appropriate financial, human (i.e. the secretariat and external experts) and logistical (i.e. interpretation and working spaces) resources and operational discretion regarding their use. It further encourages the State party to discuss with the NPMs their resource needs and allocate appropriate resources to them.**

33. Although it is provided that the NPMs have unlimited access to all relevant information and to all places of deprivation of liberty, the SPT has observed that, in

practice, the detention authorities limit the access of the Detention Board to personal information of detainees for reasons of confidentiality.

34. **The SPT urges the State party to ensure that the NPMs are given full and unlimited access to all relevant information and to all places of deprivation of liberty in order to enable them to properly fulfil their mandate.**

35. The SPT notes with concern that whilst all reports prepared by the NPMs, including annual reports and visit reports, are submitted to the relevant Minister, they have never been made public. The SPT was told that the authorities saw no reason to make such reports public.

36. **The SPT recommends that the State party facilitate the publication of all reports produced by the NPMs and also to ensure that their annual reports are transmitted to the SPT, in accordance with Article 23 of the OPCAT and paragraph 29 of the NPM Guidelines.**

37. The SPT notes that there is very little knowledge of the NPMs among relevant stakeholders, including persons deprived of liberty, public authorities and other state monitoring bodies, civil society actors and the general public.

38. **The SPT recommends that the State party (a) take steps to assist the NPMs make their mandate and work better known to the general public, (b) ensure that the NPMs are recognised as a key component in the country's system for prevention of torture and ill-treatment, (c) contribute to making the work of the NPMs more visible by, for example, public awareness campaigns and other promotional activities including producing and distributing materials on the mandate and activities of the NPMs, in various languages, to the persons of deprived of liberty, public authorities, civil society, lawyers and the judiciary, and the public, and (d) engage a broader spectrum of stakeholders, especially civil society, in dialogues and strategic planning.**

IV. Final recommendations

39. The SPT recalls that prevention of torture constitutes an on-going and wide-ranging obligation of the State party. The SPT requests that the State party keeps the SPT annually informed of any legislative and policy changes and other relevant developments regarding the NPMs, in order that it might continue to assist the State party in fulfilling its obligations under the Optional Protocol.

40. The SPT emphasizes that its visit provides Malta with an ideal opportunity to demonstrate its goodwill and readiness to fulfil its international obligations under the Optional Protocol.

41. The SPT regards its recent advisory visit and the present report as the commencement of a constructive dialogue with Malta. The SPT stands ready to assist Malta, as far as it is able, in fulfilling its obligations under the Optional Protocol, in particular by the provision of technical assistance and advice, in order to achieve their common goal of prevention of torture and ill-treatment in the places of deprivation of liberty.

42. **The SPT recommends that the State party distribute this report to all the relevant Government departments and institutions. In addition, The SPT recommends that the State party make this report public, believing this in itself to be a preventive measure, and requests that it be notified of the State Party's decision in that regard.**

Annexes

Annex I

List of Government officials and other persons with whom the Subcommittee on Prevention of Torture met

A. National authorities

Ministry for Home Affairs and National Security

- Mr. Mr Joseph St. John, Head of Delegation
- Ms. Lavinia Seguna, Contact Point
- Mr. Andrew Seychell, Malta Police Force
- Mr. Mario Spiteri, Malta Police Force
- Mr. Simon Buttigieg, Executive Head of Corradino Correctional Facility(CCF)
- Ms. Mariella Camilleri, Assistant Director, Corradino Correctional Facility(CCF)
- Mr. Mark Pellicano, Assistant Manager, Corradino Correctional Facility(CCF)
- Mr. Mario Schembri, Head Detention Service
- Mr. Alex Tortell, Operations Director, Agency for Welfare of Asylum seekers

Ministry for Justice, Culture and Local Government

- Ms. Donatella Frendo Dimech, Deputy Attorney General
- Mr. Brian Borg, EU Affairs

Ministry for Energy and Health

- Ms. Stephanie Xuereb, Chairperson of the Mount Carmel Psychiatric Hospital

Ministry for the Family and Social Solidarity

- Ms. Carmen Buttigieg, Director Social Welfare Standards
- Ms. Ruth Sciberras, Operations Director Appogg

B. Legislative branch

- Ms. Deborah Schembri, Chairperson of the Standing Committee on Social Affairs
- Mr. Tonio Fenech, Chairperson of the Public Account Committee
- Mr. Silvio Parnis, Chairperson of the Standing Committee on Consideration of Bills

C. National Preventive Mechanism

Board of Visitors of the Prison

- Ms. Maria Cardona (Chairperson)
- Mr. John Borg
- Mr. Anton Grech
- Mr. James Harrison
- Mr. Mark Attard Montalto
- Mr. Martine Cassar
- Fr. Dionysius Mintoff
- Ms. Yvette Borg, LL.D
- Ms. Mariette Borg

Board of Visitors for Detained persons

- Ms. Mary Anne Agius (Chairperson)
- Mr. Joseph Borg
- Ms. Susan Mulvaney
- Mr. Charles Micallef

D. The Parliamentary Ombudsman

- Mr. Joseph Said Pullicino (the Parliamentary Ombudsman)
- Mr. Brian Said, Senior Investigation Officer
- Mr. Jurgen Cassar, Communications Officer

E. Public monitoring groups

- Mr. John M. Cachi, Commissioner for Mental Health and Older Persons
- Mr. Franco Depasquale, Chairperson of the Police Board
- Ms. Helen D'Amato, the Commissioner for Children

F. Civil society

- Aditus Foundation
- Mid-Dlam ghad-Dawl
- Victim Support Malta
- Jesuit Refugee Service (JRS Malta)
- Integra Foundation
- Red Cross-Malta

G. International organizations

- The United Nations High Commissioner for Refugees in Malta

Annex II

List of places of deprivation of liberty jointly visited by the national preventive mechanisms and the Subcommittee on Prevention of Torture

- Corradino Correctional Facility
- Safi Detention Centre